

**IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE  
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE**

STATE OF TENNESSEE,  
ex rel. ROBERT E. COOPER, JR.,  
ATTORNEY GENERAL and REPORTER,

Petitioner,

v.

INNOVATION VENTURES, LLC, a foreign  
limited liability company, LIVING  
ESSENTIALS, LLC, a foreign limited liability  
company, and MICRODOSE SALES, LLC,  
a foreign limited liability company,

Respondents, Third-party plaintiffs,

v.

ROBERT E. COOPER, JR., INDIVIDUALLY  
and IN HIS OFFICIAL CAPACITY AS  
ATTORNEY GENERAL and REPORTER,

Third-party defendant.

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Case No. 13C4341  
Jury Trial Requested

**THIRD-PARTY COMPLAINT and AMENDED COUNTER CLAIM**

Respondent/Counter Claimants/Third-Party Plaintiffs Innovation Ventures, LLC, Living Essentials, LLC and MicroDose Sales, LLC (collectively "Third Party Plaintiffs") by their attorneys, Hubbard & Smith, for their Amended Counter Claim against Petitioner/Counter Respondent/Third-Party Defendant State of Tennessee ex. rel. Robert E. Cooper, Jr., Attorney General and Reporter, and their Third-Party Complaint against Robert E. Cooper, Jr., individually, and in his official capacity as Attorney General and Reporter, (hereinafter Petitioner/Counter

Respondent and Third Party Defendants will be collectively referred to as “Third Party Defendant”), allege the following:

### **NATURE OF THE CASE**

1. Third-Party Plaintiffs bring this action to seek resolution of an actual and justiciable controversy that has arisen in connection with actions by Third-Party Defendant to obtain Third-Party Plaintiffs’ valuable, highly confidential trade secret information relating to the formula for products distributed under the brand 5-hour ENERGY® and to enjoin Third-Party Defendant from obtaining this trade secret information from Third-Party Plaintiffs in violation of Third-Party Plaintiffs’ due process rights. Third-Party Defendant has no legitimate need for this information, particularly when Third-Party Plaintiffs have offered alternatives that would meet the purported needs of Third-Party Defendant without unnecessarily exposing Third-Party Plaintiffs’ trade secret to public disclosure. Third-Party Defendant’s actions to force Third-Party Plaintiffs to disclose this information under the circumstances presented here exceed the scope of its investigative powers and violate Third-Party Plaintiffs’ rights under Tennessee’s Constitution and the United States Constitution.

2. Third-Party Plaintiffs manufacture and sell the leading energy shot on the market, 5-hour ENERGY®. 5-hour ENERGY® products were introduced in 2004, and now over nine million bottles of 5-hour ENERGY® are sold every week. Numerous competitors constantly seek to emulate the success of 5-hour ENERGY® by attempting to replicate Third-Party Plaintiffs’ highly confidential, trade secret, proprietary formula – in particular, the specific amounts of ingredients in 5-hour ENERGY® products. Third-Party Plaintiffs derive substantial, independent, actual and potential economic value from the fact that the specific amounts of ingredients in 5-hour ENERGY® products are neither known, nor readily ascertainable by proper means, to

competitors. Third-Party Plaintiffs engage in reasonable efforts to maintain the secrecy of the exact formulation of 5-hour ENERGY® products, which is Third-Party Plaintiffs' trade secret.

3. Third-Party Defendant is the representative of one of the five states that comprise the Executive Committee of a multistate investigation regarding certain issues relating to the advertising of 5-hour ENERGY® products. There are currently thirty-three (33) states participating in the multistate investigation. Each of the five Executive Committee members issued a subpoena or civil investigative demand ("collectively Subpoenas") to Third-Party Plaintiffs that seek information relating to a single advertisement that ran for approximately three months ending in October 2012 related to surveys of doctors, and to advertising and promotional claims of "no crash" associated with 5-hour ENERGY® products, as well as to certain language placed on the product label.

4. Third-Party Defendant issued a Request for Consumer Protection Information (RCPI) that sought information about the doctor survey advertisement and "no crash" advertising claim.

5. The RCPI does not ask for information about the formula of 5-hour ENERGY®, nor does the RCPI reference the safety of 5-hour ENERGY® or allege any physical harm to consumers. The RCPI only asks for records concerning public marketing efforts by Counter Claimant.

6. However, now, without any articulable need for information outside of the scope of the RCPI and unrelated to the subject matter of its investigation, Third-Party Defendant is seeking to compel Third-Party Plaintiffs to produce highly confidential trade secret information relating to the exact formulation of 5-hour ENERGY® products and place it at unnecessary risk of public disclosure.

7. These actions violate Article I of the Tennessee Constitution and the Fourth and Fourteenth Amendments of the United States Constitution.

8. Specifically, Third-Party Defendant's actions here exceed the scope of Third-Party Defendant's investigative authority, and the manner in which they have exercised that authority violates Third-Party Plaintiffs' due process rights and amounts to an unlawful search and seizure under Article I, Section 7 of the Tennessee Constitution and the Fourth Amendment of the United States Constitution.

### **THE PARTIES**

9. Living Essentials, LLC, Innovation Ventures, LLC and MicroDose Sales, LLC are privately held companies organized and existing under the laws of the State of Michigan with their principal place of business in Farmington Hills, Michigan.

10. The Attorney General and Reporter for the State of Tennessee is the chief legal representative for the State of Tennessee and all of its departments and divisions.

11. Robert E. Cooper, Jr., is the Attorney General and Reporter for the State of Tennessee.

### **FACTUAL BACKGROUND**

12. 5-hour ENERGY® is a liquid dietary supplement that is sold in portions less than 2 oz. 5-hour ENERGY® contains no sugar and no herbal stimulants, and it contains less caffeine than the approximate amount contained in a 12 ounce brewed coffee from Starbucks. 5-hour ENERGY® also contains vitamins and nutrients, including a proprietary blend of ingredients formulated for energy. The ingredients of 5-hour ENERGY® are listed on its label; however, amounts of individual ingredients in the proprietary energy blend are not identified. This exact

formulation is not required by any governing entity to be disclosed on the label and is a trade secret.

13. Millions of adults choose to purchase 5-hour ENERGY® each week and can easily judge for themselves within minutes of consuming the product whether they feel that the product has provided them with energy as advertised. The volume of sales, indicative of many repeat purchasers, indicates that the majority of consumers are satisfied with their purchases.

14. Third-Party Plaintiffs have made various advertising claims associated with 5-hour ENERGY® since it was first sold in 2004. Initially, 5-hour ENERGY® made the claim “no crash” associated with its product, which refers to the rapid drop in blood glucose levels and associated subjective feeling that occurs after consumption of large amounts of sugar frequently contained in beverages or energy drinks. This phenomenon is commonly known as a “sugar crash.” Because 5-hour ENERGY® does not contain sugar, its consumption does not cause such a crash.

**A. 2007 NAD Inquiry**

15. In 2007, the National Advertising Division of the Better Business Bureau (“NAD”), a private self-regulatory body for the business community, initiated an inquiry into several claims associated with 5-hour ENERGY®, including the “no crash” claim. Third-Party Plaintiffs cooperated with NAD’s inquiry and provided certain materials, pursuant to confidentiality provisions, relating to each of the advertising claims. NAD is a private entity, not subject to any public records law or Freedom of Information Act, and Third-Party Plaintiffs invoked its procedures regarding trade secrets for certain proprietary information that it provided.

16. NAD issued its conclusions, one of which recommended that 5-hour ENERGY® qualify its “no crash” language to indicate that it referred to a sugar crash. Third-Party Plaintiffs complied with NAD’s recommendation, and since 2009, its “no crash” statements have included

the language “No crash means no sugar crash. 5-hour ENERGY® contains no sugar.” In early 2013, in response to a follow-up inquiry from NAD, Third-Party Plaintiffs further altered their labeling and advertisements to state simply “no sugar crash.”

17. Third-Party Plaintiffs did not provide formula information to NAD to support the “no crash” claim. The no crash claim is supported by clinical trials and scientific evidence, which Counter Claimant provided to NAD, and which have already been provided to Third-Party Defendant, without redaction.

**B. 2013 Investigation by State Attorneys General**

18. In January 2013, Third-Party Defendant, along with the other four members of the Executive Committee, issued Subpoenas that contained 41 requests for documents and information. The investigation primarily focused on a single advertisement that ran for approximately three months ending in October 2012 related to surveys of doctors. Of the 41 requests, only five related to the claim of no “crash” associated with 5-hour ENERGY® products. The requests sought marketing, advertising, and sales information. With this understanding regarding the narrow focus of the investigation, Third-Party Plaintiffs agreed to a standard confidentiality agreement with Third-Party Defendant and the other members of the Executive Committee.

19. Third-Party Plaintiffs did not seek to quash or modify the Subpoenas. In fact, Third-Party Plaintiffs worked collaboratively with representatives of Third-Party Defendant and the other states participating in the multistate investigation to comply with the Subpoenas.

20. Request #31 in the RCPI states: “Provide all correspondence between You and the National Advertising Division of the Council of Better Business Bureaus that refer or relate to a

‘crash’ following use of 5-hour ENERGY.” In response to this request, Third-Party Plaintiffs searched for and located the materials it provided to NAD in 2007 through its outside counsel.

21. The 2007 NAD materials included a cover letter and a scientific literature review (“Literature Review”) that referenced the specific amounts of ingredients related to other 5-hour ENERGY® product claims under review by NAD. The portions of these materials that referenced the amounts of ingredients were not being reviewed for the “no crash” claim.

22. The analysis in the Literature Review of the “no crash” claim consists of one page, which notes the simple fact that is obvious on the face of every bottle of 5-hour ENERGY®: there is no sugar crash associated with 5-hour ENERGY® because it contains no sugar.

23. On the copy of the Literature Review produced to Third-Party Defendant, there are no redactions on the page of the Literature Review that addresses the “no crash” claim.

24. Third-Party Plaintiffs also produced to the Third-Party Defendant full and unredacted copies of clinical trials and other substantiation for their “no crash” claim.

### **C. Dispute Regarding Redaction of Information**

25. In their production of the NAD Literature Review and cover letter to Third-Party Defendant, Third-Party Plaintiffs disclosed the ingredients in 5-hour ENERGY® products but redacted only the specific *amounts* of ingredients. Such information was not responsive to the requests in the Subpoenas, and Third-Party Plaintiffs sought to minimize the unnecessary risk of exposure of their highly confidential and proprietary information.

26. Each of the Subpoenas, including the RCPI, contemplates that documents may be withheld on grounds other than privilege. Instruction #12 in the RCPI instructs the creation of a log “[i]f any document on information, or portion thereof, is withheld for any reason, including

but not limited to a claim of privilege...” (emphasis added). Instruction #13 states that “[i]f you have or know of any document or information but cannot provide, either in whole or in part, the document or information in a complete manner, provide the best document or information you have on the subject and specify the reasons for the incompleteness of your answer.”

27. On April 17, 2013, after noting the redaction, the Executive Committee requested that Third-Party Plaintiffs produce un-redacted copies of these two documents so that the specific amounts of ingredients in the 5-hour ENERGY® products would be provided. The Executive Committee expressed concern that “Redaction of this information makes it difficult, if not impossible, to evaluate the strength of the experts’ opinions.” Third-Party Plaintiffs explained their concerns over the extreme sensitivity of the formula-related information.

28. Notwithstanding that the ingredient amount-related portions of the documents were not relevant to the “no crash” inquiry, Third-Party Plaintiffs offered to provide specific information that would assist the Executive Committee’s review of the Literature Review. Third-Party Plaintiffs voluntarily disclosed to the Executive Committee the amount of caffeine in 5-hour ENERGY®, which Third-Party Plaintiffs also recently released to the public. Third-Party Plaintiffs further offered to provide the Executive Committee with a limited range of the amounts other ingredients, as a reasonable balance between the stated need for the information, and Third-Party Plaintiffs’ imperative business need to keep this highly sensitive information strictly confidential. The ranges offered by Third-Party Plaintiffs would provide more than adequate specificity and all of the necessary information for an in-depth scientific review while avoiding the wholly unnecessary and unfair risk of disclosure of the specific formula.



29. In fact, it is common in the industry for experts, who are analyzing efficacy and/or safety of a product, to prefer ranges as opposed to exact amounts. See the Affidavits of Leslie A. Beyer, M.S., DABT and A. Dallas Wait, Ph.D. attached as Exhibits 1 and 2.

30. Third-Party Defendant declined Third-Party Plaintiffs' offer and continues to demand unredacted copies of the two documents, notwithstanding that the RCPI never sought production of any formula-relating information at all. Third-Party Defendant did not state why Third-Party Plaintiffs' offer was insufficient, and its representatives have refused to negotiate with Third-Party Plaintiffs regarding means by which Third-Party Plaintiffs can assist this review of the Literature Review without disclosing one of Third-Party Plaintiffs' most valuable assets.

31. Third-Party Defendant has now filed a Petition for Enforcement of the RCPI demanding that Third-Party Plaintiffs produce an unredacted copy of the two documents.

**D. Harm to Third-Party Plaintiffs and Violation of Constitutional Rights**

32. Production of unredacted copies of these documents would place Third-Party Plaintiffs' trade secret information in Third-Party Defendant's state records and potentially in the records of each of the thirty-three states participating in the multistate investigation.

33. Neither the confidentiality agreement between Third-Party Plaintiffs and Third-Party Defendant, nor the statutory exemptions from public records requests adequately protect Third-Party Plaintiffs' trade secrets from the risk of disclosure and misappropriation. These protections are inadequate in light of the highly sensitive information relating to the formula for the 5-hour ENERGY® products and the incalculable and irreparable harm that would result from public disclosure of this information. In this electronic age, one person can irrevocably destroy the privacy of information by posting content to the internet, whether acting innocently,

negligently, or intentionally. Such disclosure would irreparably harm Third-Party Plaintiffs and leave them without remedy.

34. Third-Party Plaintiffs do not challenge the general authority of Third-Party Defendant to seek trade secret information pursuant to their investigative authority. However, the manner in which Third-Party Defendant has exercised this authority under the factual circumstances presented here has violated Third-Party Plaintiffs' constitutional rights.

35. It is settled that "when an administrative agency subpoenas corporate books or records, the Fourth Amendment requires that the subpoena be sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome." *See v. City of Seattle*, 387 U.S. 541 544 (1967). Third-Party Defendant's actions, which now seek information beyond the scope of the RCPI and not relevant to the advertising investigation, violate the Fourth Amendment of the Constitution.

36. Third-Party Defendant's actions in demanding production of proprietary trade secrets fall well outside the scope of their narrow advertising investigation, while arguing that Third-Party Plaintiffs have no ability to challenge their actions in state court, violates Third-Party Plaintiffs' constitutional due process rights.

37. Third-Party Defendant's conduct of its investigation exceeds the scope of the state's investigatory and police powers. "To justify the state in thus interposing its authority in [sic] behalf of the public, it must appear – First, that the interests of the public ... require such interference; and second that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals." *Lawton v. Steele*, 152 U.S. 133, 137 (1894).

38. Third-Party Defendant is authorized by statute to conduct investigations. However, Third-Party Defendant did not seek information relating to Third-Party Plaintiffs' product formulation in the RCPI issued to Third-Party Plaintiffs, nor is this information necessary to conclude Third-Party Defendant's investigation, which focuses on narrow advertising claims. Third-Party Defendant is free to conduct expert analysis or consumer perception studies on 5-hour ENERGY® or to examine the product and its effects in any way they deem necessary. He does not need to know the exact formulation of 5-hour ENERGY® to do so.

39. Third-Party Defendant cannot articulate any legitimate need for an unredacted copy of these documents that would outweigh Third-Party Plaintiffs' need to maintain the secrecy of the precise formulation of its 5-hour ENERGY® products. His actions in continuing to seek this information exceed the scope of his investigative authority and violate Third-Party Plaintiffs' constitutional rights by failing to reasonably balance the intrusion on Third-Party Plaintiffs' protected property rights with a necessary purpose.

40. The disclosure of the highly sensitive information relating to the specific amounts of ingredients in the formula for the 5-hour ENERGY® products could enable Third-Party Plaintiffs' competitors to misappropriate the value of these trade secrets and deprive Third-Party Plaintiffs of the opportunity to continue to obtain a competitive advantage from its own trade secrets. Any public disclosure of these highly confidential trade secrets would result in irreparable harm to Third-Party Plaintiffs.

41. An actual and justiciable controversy has arisen between Third-Party Plaintiffs and Third-Party Defendant because Third-Party Defendant contends that he can compel Third-Party Plaintiffs to disclose confidential trade secret information relating to the exact formulation for 5-

hour ENERGY® products. Third-Party Defendant has initiated an enforcement action seeking this information.

42. A judicial declaration is necessary and appropriate at this time to declare that Third-Party Defendant is not entitled to compel Third-Party Plaintiffs to disclose their proprietary information related to the exact formulation of 5-hour ENERGY® products because such actions would violate Third-Party Plaintiffs' State and Federal Constitutional rights.

**COUNT ONE**  
**(Declaratory Judgment that the RCPI Does Not Require Production of Formula Information)**

43. Third-Party Plaintiffs incorporate by reference the allegations in paragraphs 1-42.

44. Third-Party Defendant's actions in demanding production of proprietary trade secrets fall well outside the scope of their narrow advertising investigation.

45. Third-Party Defendant did not seek information relating to Third-Party Plaintiffs' product formulation in the RCPI issued to Third-Party Plaintiffs, nor is this information necessary to conclude Third-Party Defendant's investigation, which focuses on narrow advertising claims. Third-Party Defendant is free to conduct expert analysis or consumer perception studies on 5-hour ENERGY® or to examine the product and its effects in any way they deem necessary. They do not need to know the exact formulation of 5-hour ENERGY® to do so.

46. Third-Party Defendant cannot articulate any legitimate need for an unredacted copy of these documents that would outweigh Third-Party Plaintiffs' need to maintain the secrecy of the precise formulation of its 5-hour ENERGY® products. His actions in continuing to seek this information exceed the scope of their investigative authority and violate Third-Party Plaintiffs'

constitutional rights by failing to reasonably balance the intrusion on Third-Party Plaintiffs' protected property rights with a necessary purpose.

47. Instructions 12 in the RCPI expressly permit redactions for any reason "including but not limited to" privilege (emphasis added). Counter Claimant has complied with the RCPI, and explained that the basis for doing so is to protect a valuable trade secret from unnecessary risk of exposure, in light of the fact that the formula amounts are not relevant or necessary to Third-Party Defendant's evaluation of the claims under investigation.

48. Pursuant to Tenn. Code Ann. § 29-14-101 et seq. and Tenn R. Civ. P. 57, declaratory relief is appropriate in the form of a Judgment Declaring that the RCPI does not request disclosure of Third-Party Plaintiffs' exact formula and that disclosure is neither necessary nor appropriate in this case.

## **COUNT TWO**

### **(Unconstitutional Search and Seizure Under the Tennessee Constitution)**

49. Third-Party Plaintiffs incorporate by reference the allegations in paragraphs 1-48.

50. Third-Party Defendant's RCPI did not seek information related to the formula of 5-hour ENERGY® products, nor any subject matter to which the formula would be relevant.

51. Third-Party Defendant's actions in seeking the Third-Party Plaintiffs' trade secret formula information is not limited in scope to the subject matter of the RCPI, the formula information is not relevant to Third-Party Defendant's investigation, nor was it specified in the RCPI. Further, Third-Party Defendant's actions in seeking the formula information have created an undue burden on Third-Party Plaintiffs.

52. Third-Party Defendant's actions violate Third-Party Plaintiffs' Article I, Section 7 right to be free of unlawful searches and seizures.

53. In violation of Tennessee Law, Third-Party Defendant has acted to deprive Third-Party Plaintiffs of their rights under the Article I Section 7 of the Tennessee Constitution.

### **COUNT THREE**

#### **(Unconstitutional Search and Seizure Under the United States Constitution)**

54. Third-Party Plaintiffs incorporate by reference the allegations in paragraphs 1-53.

55. Third-Party Defendant's RCPI did not seek information related to the formula of 5-hour ENERGY® products, nor any subject matter to which the formula would be relevant.

56. Third-Party Defendant's actions in seeking the Third-Party Plaintiffs' trade secret formula information is not limited in scope to the subject matter of the RCPI, the formula information is not relevant to Third-Party Defendant's investigation, nor was it specified in the RCPI. Further, Third-Party Defendant's actions in seeking the formula information have created an undue burden on Third-Party Plaintiffs.

57. Third-Party Defendant's actions violate Third-Party Plaintiffs' Fourth Amendment right to be free of unlawful searches and seizures.

58. In violation of 42 U.S.C. §1983, Third-Party Defendant has acted under color of state law to deprive Third-Party Plaintiffs of their rights under the Fourth Amendment of the United States Constitution.

### **COUNT FOUR**

#### **(Violation of Due Process Under the Tennessee Constitution)**

59. Third-Party Plaintiffs incorporate by reference the allegations in paragraphs 1-58.

60. Third-Party Plaintiffs have a protected property interest in their trade secret information.

61. Disclosure of the trade secret information to Third-Party Defendant places it at tangible and imminent risk of public disclosure, which would destroy its value.

62. Third-Party Defendant's actions in seeking the trade secret information do not bear any relation to the stated purposes of the multistate investigation, as set forth in the RCPI, and the information sought is not reasonably necessary or relevant to Third-Party Defendant's investigation. As such, the compelled disclosure will not advance a significant state interest.

63. Courter Respondent's failures to balance the intrusion upon Third-Party Plaintiffs' protected property interest to the reasonable need to protect the public from misleading advertising claims is an unduly oppressive, irrational and arbitrary.

64. Third-Party Defendant's actions violate the substantive due process rights guaranteed by Article 1, Section 8 of the Tennessee Constitution.

#### **COUNT FIVE**

##### **(Violation of Substantive Due Process Under the United States Constitution)**

65. Third-Party Plaintiffs incorporate by reference the allegations in paragraphs 1-64.

66. Third-Party Plaintiffs have a protected property interest in their trade secret information.

67. Third-Party Defendant's actions in seeking the trade secret information do not bear any relation to the stated purposes of the multistate investigation, as set forth in the RCPI, and the information sought is not reasonably necessary or relevant to Third-Party Defendant's investigation. As such, the compelled disclosure will not advance a significant state interest.

68. Third-Party Defendant's failure to balance the intrusion upon Third-Party Plaintiffs' protected property interest to the reasonable need to protect the public from misleading

advertising claims is an unduly oppressive, irrational, and arbitrary exercise of governmental authority.

69. In violation of 42 U.S.C. §1983, Third-Party Defendant has acted under color of state law to violate Third-Party Plaintiffs' substantive due process rights guaranteed by the Fourteenth Amendment of the United States Constitution.

### **PRAYER FOR RELIEF**

WHEREFORE, Third-Party Plaintiffs pray for judgment as follows:

- a. A jury trial in this matter;
- b. A declaration that Third-Party Defendant's RCPI does not require production of the exact formulation of 5-hour ENERGY®;
- c. A declaration that Third-Party Defendant's actions in seeking to compel production of the exact formulation of 5-hour ENERGY® products in light of the scope of the RCPI and nature of their investigation and under these factual circumstances violates Third-Party Plaintiffs' due process rights under Article I, Section 17 of the Tennessee Constitution.
- d. A declaration that Third-Party Defendant's actions in seeking to compel production of the exact formulation of 5-hour ENERGY® products in light of the scope of the RCPI and nature of their investigation and under these factual circumstances violates Third-Party Plaintiffs' due process rights under the Fourteenth Amendment to the United States Constitution;
- e. A declaration that Third-Party Defendant's actions in seeking to compel production of the exact formulation of 5-hour ENERGY® products in light of the scope of the RCPI and nature of their investigation and under these factual circumstances violates Third-Party Plaintiffs'



protections against unreasonable search and seizure under Article I, Section 7 of the Tennessee Constitution.

f. A declaration that Third-Party Defendant's actions in seeking to compel production of the exact formulation of 5-hour ENERGY® products in light of the scope of the RCPI and nature of their investigation and under these factual circumstances violates Third-Party Plaintiffs' protections against unreasonable search and seizure under the Fourth Amendment of the United States Constitution.

g. A declaration that Third-Party Plaintiffs are not required to provide information regarding the specific amounts of ingredients in 5-hour ENERGY® products to Third-Party Defendant; and

h. An injunction precluding Third-Party Defendant from violating Third-Party Plaintiffs' constitutional rights by continuing to seek to compel disclosure of the specific amounts of the ingredients in 5-hour ENERGY® products;

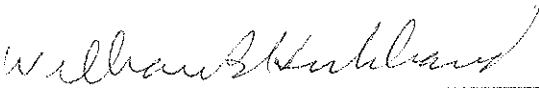
i. An injunction pursuant to 42 U.S.C. §1983 precluding Third-Party Defendant from violating Third-Party Plaintiffs' constitutional rights by continuing to seek to compel disclosure of the specific amounts of the ingredients in 5-hour ENERGY® products;

j. Any such other and further relief as this Court may deem just and proper.

Respectfully submitted,

HUBBARD & SMITH

Dated: December 13, 2013



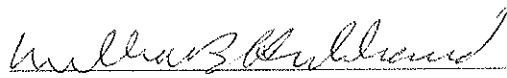
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## CERTIFICATE OF SERVICE

I certify that on this 13 day of December, 2013, the above document was sent by e-mail and first class, postage prepaid U.S. Mail to the following individual(s):

Brant Harrell  
Assistant Attorney General  
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William B. Hubbard